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January 22, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 10, 2002

Case Number: VSO-0556

This Decision concerns the eligibility of XXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ A DOE Operations Office suspended the Individual's access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, it is my decision that the Individual's access authorization be restored.

I. Background

The Individual is employed by a contractor at a DOE facility. During the course of a background investigation, potentially derogatory information was discovered concerning the Individual's prior consultation with a psychiatrist (First Psychiatrist) for depression. The Individual then participated in a Personnel Security Interview (PSI) conducted by the local security office concerning the First Psychiatrist's diagnoses of Depression and Alcohol Dependence. Later, the Individual was examined by a DOE consultant psychiatrist (DOE Psychiatrist) and in a February 2002 report, the DOE Psychiatrist diagnosed the Individual as suffering from Alcohol Dependence, in partial sustained remission. The DOE Psychiatrist opined that the Individual had not demonstrated sufficient evidence of reformation or rehabilitation. The DOE Psychiatrist also found that the Individual's alcohol dependency could cause a defect in judgment or reliability.

Because the derogatory information concerning the Individual had not been resolved, the local DOE Office obtained authority to initiate this administrative review proceeding. The local DOE Office then issued a

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

Notification Letter to the Individual, citing the DOE Psychiatrist's diagnosis of Alcohol Dependence and the Individual's admission that he was continuing to consume alcohol while taking antidepressant medication as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J) and (h) (Criterion H). 2/

Upon receipt of the Notification Letter, the Individual filed a response to the Notification Letter and requested a hearing. The DOE transmitted the Individual's hearing request to the Office of Hearings and Appeals (OHA) Director, and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter within the time frame prescribed by the DOE regulations. 10 C.F.R. § 710.25(g).

At the hearing, the Individual represented himself and offered his own testimony as well as the testimony of the First Psychiatrist from whom he had received treatment in 1999, the psychiatrist from whom he is currently receiving treatment (Treating Psychiatrist), and an ex-girlfriend. The local DOE office presented two witnesses, a Personnel Security Specialist and the DOE Psychiatrist. The local DOE Office entered 18 exhibits into the record (Exhibits 1-1 to 6-1); the Individual tendered 10 exhibits (Ind. Exhibits 1-10). On November 18, 2002, I closed the record in this case when I received the hearing transcript (hereinafter referred to as "Tr.").

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral

2/ Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion H refers to information indicating that an individual suffers from "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude for the reasons set forth in this Opinion that the local DOE Office properly invoked Criteria J and H. However, I also find that the security concerns raised by the derogatory information have been sufficiently mitigated. Consequently, it is my decision that the Individual's access authorization should be restored.

III. Findings of Fact and Analysis

The derogatory information concerning Criterion H and Criterion J centers on the Individual's diagnosis of Alcohol Dependence. It is beyond dispute that a diagnosis of Alcohol Dependence raises security concerns. In response, the Individual maintains that he is not in fact alcohol dependent and that he was incorrectly diagnosed by the DOE Psychiatrist. Most of the facts in this case are not disputed. I present a brief synopsis of the relevant facts below.

The Individual sought treatment sometime around 1996 for depression. Exhibit 3-2 at 14 (Treatment Report at 1). The Individual was given an antidepressant drug. Due to side effects the Individual discontinued taking the drug and tried to cope with his depression by himself. Exhibit 3-2 at 14-15 (Treatment Report at 1-2). In January 1999, the Individual again sought treatment for his depression. Among his other symptoms, he reported that he was consuming alcohol more than usual over the last several months, approximately four to five double shots of whiskey a night ever since he began to have problems in a relationship. Exhibit 3-2 at 15-16 (Treatment Report at 2-3). The Individual would use the whiskey to help him sleep. Exhibit 3-2 at 16 (Treatment Report at 3); Exhibit 3-1 at 5. In his initial January 1999 report, the First Psychiatrist diagnosed the Individual as suffering from Dysthymic Disorder, Major Depressive Episode and from "Alcohol Abuse by Report." Exhibit 3-2 at 16 (Treatment Report at 3). The First Psychiatrist prescribed an antidepressant drug to the Individual and referred the Individual to a counselor to be evaluated for possible chemical dependency. Exhibit 3-2 at 17 (Treatment Report at 4); Tr. at 95. The Individual did not see the counselor because his insurance would not cover the costs. Tr. at 54. He was also advised not to use alcohol for the next three months but informed the First Psychiatrist that he would not promise to be abstinent. Exhibit 3-2 at 17 (Treatment Report at 4). The Individual continued to see the First Psychiatrist for treatment and reported to him that his consumption of alcohol had decreased by 60 or 70 percent. Exhibit 3-2 at 12 (2/8/99 Progress Review). In a progress review dated 2/19/99, the First Psychiatrist noted that the Individual was improving and in the Diagnosis section of the report noted that the Individual suffered from Dysthymic Disorder, "Major Depressive Disorder, in remission" and "Alcohol Abuse and Dependency." Exhibit 3-2 at 11 (2/19/99 Progress Review). These diagnoses were also listed in other progress reviews. Exhibit 3-2 at 4, 6 (5/5/00 Progress Review and 8/2/99 Progress Review).

In April 2001, the Individual stopped taking his prescribed antidepressant medication. Ind. Exhibit 9. In December 2001, the Individual sought help from the Treating Psychiatrist because the symptoms of his

depression were returning. Ind. Exhibit 9 at 2. The Treating Psychiatrist prescribed antidepressant medication and the Individual improved.

Pursuant to a background investigation for an upgraded security clearance, the local security office discovered that the Individual had been treated by a psychiatrist. The local security office then sent the Individual to be interviewed by the DOE Psychiatrist. Subsequently, the DOE Psychiatrist wrote an evaluative report on the Individual describing her findings. Exhibit 3-1. The report states that the DOE Psychiatrist examined the Individual and administered two screening tests for substance abuse, the Substance Abuse Subtle Screening Inventory (SASSI) and the Alcohol Use Disorders Identification Test (AUDIT), both of which did not indicate a substance dependency problem. Exhibit 3-1 at 7-8. Blood tests failed to disclose elevated liver enzyme levels, which could indicate an alcohol problem. Exhibit 3-1 at 8-9. However, the DOE Psychiatrist, based upon her review of records submitted by the DOE, including medical records from the First Psychiatrist, and her interview of the Individual, determined that he met a sufficient number of the diagnostic criteria of the Diagnostic and Statistical Manual, 4th Edition (DSM-IV), in order to be diagnosed as suffering from "Alcohol Dependence in Sustained partial remission." Exhibit 3-1 at 12. She also opined that as of the date of her report the Individual had not shown adequate rehabilitation. To demonstrate rehabilitation, the DOE Psychiatrist recommended a number of treatment programs such as Alcoholics Anonymous combined with abstinence for the equivalent of two years. Exhibit 3-1 at 13-14. After his interview with the DOE Psychiatrist, the Individual stopped consuming alcoholic beverages. As of the date of the hearing, the Individual had been abstinent for seven months. Tr. at 84,137.

At the hearing, the DOE Psychiatrist elaborated on her diagnosis. Pursuant to the DSM-IV, for an someone to be diagnosed as alcohol dependent, an individual must meet three criteria from a list of criteria for alcohol dependency. Exhibit. 3-1 at 9. First she determined that the Individual met Criterion 1(a): "a need for markedly increased amounts of the substance [alcohol] to achieve intoxication or the desired affect." Tr. at 154-55; Exhibit 3-1 at 9. This was because in 1998 the Individual had been using increasing amounts of alcohol in order to go to sleep. Tr. at 154-55,157. She also concluded that the Individual had met Criterion (5): "a great deal of time is spent in activities necessary to obtain the substance, . . . , use the substance . . . , or recover from its effects" and Criterion (6) "important social, occupational, or recreational activities are given up or reduced because of substance [alcohol] use." The DOE Psychiatrist thought these criteria were applicable because during the time he was experiencing problems with his relationship and increasing his alcohol usage, the Individual stayed at home mostly and isolated himself. Tr. at 165, 170-71. Additionally, she believed he devoted more and more time to consuming alcohol during his period of increased alcohol consumption. Tr. at 165, 170-71. The DOE Psychiatrist also testified that she believed that the Individual also met Criterion (7): "[alcohol] use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by [alcohol]" Tr. at 178. In this regard she noted that the Individual continued to use alcohol despite the fact he knew that his depression could be worsened by alcohol since alcohol depresses mood. Tr. at 178.

The First Psychiatrist testified that he had treated the Individual in 1999 for Dysthymic Disorder and major depressive disorder. Tr. at 94. In his initial evaluation of the Individual he had suggested that the Individual be referred to a chemical dependency counselor for evaluation. Tr. at 95. He also offered the Individual voluntary hospitalization for chemical dependency. Tr. at 96. The Individual told him at the time he thought that if he could get treatment for his depression, the alcohol use would not be a problem. Tr. at 96. He also recommended to the Individual that he refrain from the use of alcohol for three months. Tr. at 96. The Individual informed him that he did not see any value to that recommendation since alcohol was not a problem in his life at the time. Tr. at 96-97. The First Psychiatrist felt that the Individual's comment was sincere since many patients would have just accepted the recommendation without actually implementing it. Tr. at 97. The First Psychiatrist noted in a progress review dated in February 2000 that the Individual had "dramatically reduced" his alcohol consumption. Tr. at 98-99. The First Psychiatrist acknowledged that he had also written in a progress review that there was "a risk in [the Individual] drinking [alcohol] at all" Tr. at 99; *see* Exhibit 3-2 at 10 (2/19/99 Progress Review). He went on to testify, nevertheless, that he had written that because he believed that the Individual would have the best quality of life without alcohol and that the risk of the Individual self medicating his depression with alcohol would be reduced. Tr. at 99. However, he did not think it was critical for the Individual to refrain from alcohol. Tr. at 99. The DOE Psychiatrist opined that the Individual's consumption of alcohol did not contribute to the depressive illness from which the Individual suffered. Tr. at 99-100.

The First Psychiatrist testified that in his reports he listed as a diagnosis "Alcohol Abuse and Dependency." Tr. at 101. He speculated that he just carried forward this diagnosis from his earlier evaluation of the Individual. Tr. at 101. Specifically, concerning this diagnosis, the First Psychiatrist testified:

I certainly had some concerns about it [the Individual's alcohol consumption] initially, but I have no evidence whatsoever, and I think colleagues could argue that I had slandered him with that diagnosis, considering that I had no solid evidence whatsoever that alcohol was a problem in his life once the depression cleared.

Tr. at 101.

The First Psychiatrist then reviewed the DOE Psychiatrist Report and stated that in his opinion the Individual does not suffer from Alcohol Dependency. Tr. at 114-115. With regard to his review of the DOE Psychiatrist's report he testified:

I don't see that there is enough evidence -- in all fairness to [the Individual] -- and fairness has to come into play somewhere here -- that he -- I mean, the major evidence for alcohol dependence is that he admitted to me that he was drinking a lot more than usual since he became more and more depressed, A; and, B, that he did not feel that alcohol is a problem

in his life, so he didn't give up alcohol on my recommendation. I think those are the major pieces of evidence.

On the other hand, the evidence on the other side is much broader. It hasn't interfered with the quality of his life. He hasn't found it difficult or impossible to stop drinking, to the best of our knowledge. He doesn't have elevated enzymes, doesn't meet the criteria of [the DOE Psychiatrist's] tests, hasn't lost a job because of it, hasn't been reprimanded because of it, hasn't gotten into trouble with the law because of it.

Tr. at 115.

The Treating Psychiatrist testified that the Individual came to see her in December 2001 to be treated for his depressed mood. Tr. at 45. She diagnosed the Individual as suffering from "Major Depression, recurrent" and restarted the Individual on antidepressant medication. *See* Ind. Exhibit 9 at 5. The Individual's alcohol usage was recorded in the Treating Psychiatrist's written evaluation of the Individual as "averaging four to five drinks a week" and she also noted that the Individual reported "increased drinking when depressed." Ind. Exhibit 9 at 3.

The Treating Psychiatrist was asked by the Individual to review the DOE Psychiatrist's report diagnosing the Individual as alcohol dependent. After reviewing the report, she contacted the First Psychiatrist and reviewed his notes concerning the Individual. Tr. at 52-53; Ind. Exhibit 1 at 1. The Treating Psychiatrist testified that she does not believe that the Individual has a problem with alcohol. Tr. at 66-67. In coming to this conclusion she noted that the Individual has no history of treatment for any type of alcohol problem. Tr. at 53-54. Further, the Individual had no history of Public Intoxication or arrests for Driving While Intoxicated. Tr. at 54. Another reason for her conclusion was the fact the Individual does not have a history of job loss or a relationship loss caused by drinking alcohol. Tr. at 55. The Individual by his own report does not have a history of alcohol withdrawal symptoms or a history of health problems related to alcohol consumption. Tr. at 56. She testified that alcohol had not contributed to the Individual's current problem with depression. Tr. at 57.

The Individual testified that when he was informed that the local security office wanted him to be evaluated by the DOE Psychiatrist, he thought DOE concern was that he had been treated for depression. Tr. at 82. The Individual last consumed alcohol two days before the DOE Psychiatrist's interview and the Individual stopped consuming alcoholic beverages and has been abstinent for the seven months prior to the hearing. Tr. at 84. While the Individual has stopped consuming alcoholic beverages, he does not believe that he has alcohol problem. Tr. at 203. He testified that if his clearance were restored he was uncertain if he would resume drinking alcoholic beverages. Tr. at 202-03. When asked why he would refuse to comply with a recommendation from his doctor that he stop consuming alcoholic beverages, he stated that:

“Well, to me, see, that's like the statement, "If a doctor asks you to stop eating ice cream, would you?" with no qualifying factors. That is the way I think. If you don't show me why or give me reasons, then that's my response, because I don't -- with all respect, I don't see doctors as gods.”

Tr. at 185.

An ex-girlfriend of the Individual testified that during a period approximately from July 2001 to May 2002, the ex-girlfriend saw the Individual approximately three to seven times a week. Tr. at 135-36. She testified that she had not observed the Individual consuming alcohol since February 2002. Tr. at 137. She further testified that she considered the Individual very reliable and would have no hesitation in leaving her child in the care of the Individual. Tr. at 141-42.

After reviewing the extensive expert psychiatric testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does not have an alcohol problem that raises a security concern. I was particularly impressed with the candid testimony of the First Psychiatrist who testified persuasively as to the Individual's condition with regard to his alcohol consumption. The testimony of the First Psychiatrist and the Treating Psychiatrist is convincing since their analysis of the Individual's condition is similar and seems to be much more in accord with the available facts. First, none of the tests administered to the Individual, the AUDIT, the SASSI, or any of the liver enzyme tests by the DOE Psychiatrist, indicated that the Individual had an alcohol consumption problem. Second, the record does not contain any history of the Individual having a problem with alcohol-related driving offenses or public behaviors. There is no evidence that the Individual has had any alcohol-related problems on or off the job. As the First Psychiatrist points out, the only significant evidence concerning a possible problem with alcohol consumption lies with the Individual's statement to the First Psychiatrist that he was using increasing amounts of alcohol and his refusal to take the advice of the First Psychiatrist to temporarily abstain. Tr. at 115. However, the Individual's non-problematic use of alcohol since his treatment for depression and the Individual's current seven month abstinence outweigh these adverse facts.

The DOE Psychiatrist's testimony supporting her opinion was unconvincing. Even recognizing that I am a lay person, her application of Criteria (5) and (6) to the Individual is not persuasive. In her Report the DOE Psychiatrist quotes the First Psychiatrist's notes in which he writes: “[the Individual] reports he spends most of his time alone after work. He is spending sometime in local establishments where he is using alcohol to put him to sleep.” Exhibit 3-1 at 10. She also testified that in her interview with the Individual he characterized his behavior at that time as going home and starting to consume alcohol. Tr. at 166, 169. However, it is not clear from the record that the Individual spent increased time actually trying to obtain and

consume alcohol or that important social events were given up because of alcohol use especially since I believe that the Individual was suffering from depression at the time of his increased alcohol usage. 3/

In sum, I find that the expert testimony of the First Psychiatrist and the Treating Psychiatrist has mitigated the security concerns raised by the DOE Psychiatrist's report.

IV. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance. However, I also find sufficient evidence in the record to resolve this doubt. Therefore, I conclude that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

3/ With regard to Criterion (7), there does not appear to be substantial evidence indicating that the Individual was specifically told that his depression would worsen if he continued to consume alcohol or that he was specifically advised he should not consume alcohol while taking antidepressants. The DOE Psychiatrist states in her report and testified that the Individual told her that he knew alcohol was a depressant and was aware of the risks of consuming too much alcohol. Exhibit 3-1 at 7; Tr. at 178. However, it is not clear from the record as to what the "risk" the Individual was referring to or how significant the Individual perceived the risk to be. The DOE Psychiatrist also referenced the First Psychiatrist's notes in which he wrote "I still think there is a risk of [the Individual] drinking at all but at this point he certainly has it very well under control." Exhibit 4-2 at 9 (2/29/99 Progress Review); Exhibit 3-1 at 11. However, the DOE Psychiatrist's report goes on to state, "The only problem that I could see in the medical records was the lack of documentation on subsequent visits that drinking with medication was not advised." Exhibit 3-1 at 11. Other than when the First Psychiatrist suggested that he stop consuming alcohol for three months, the Individual has maintained that he was not specifically advised that he should not consume alcohol while taking antidepressants. Exhibit 3-1 at 11. On this point, the Treating Psychiatrist has testified that in fact she does not always advise her patients of various potential drug interactions with alcohol. Tr. at 79-80. The First Psychiatrist stated that in the Individual's case he believed there is no evidence that consuming alcohol contributed to the Individual's depression. Tr. at 99-100. At best, the evidence is mixed as to whether the Individual continued to use alcohol despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.

10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: January 22, 2003

